

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

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UNITED STATES OF AMERICA
AND THE STATE OF INDIANA,

STEPHEN B. ... CLERK
FOR THE UNITED STATES DISTRICT
COURT OF INDIANA

Plaintiffs

v.

Civil No.

2:04CV348RL

ATLANTIC RICHFIELD COMPANY;
ARCO ENVIRONMENTAL
REMEDATION, L.L.C.; BP PRODUCTS
NORTH AMERICA INC.; E.I. DU PONT
DE NEMOURS AND COMPANY;
EXXON MOBIL CORPORATION;
GATX CORPORATION; GEORGIA-
PACIFIC CORPORATION; ISPAT
INLAND INC.; AND UNITED
STATES STEEL CORPORATION,

Defendants.

_____ /

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of and on behalf of the Secretary of the United States Department of Interior ("DOI"), and the State of Indiana, through the Indiana Department of Natural Resources ("IDNR") and the Indiana Department of Environmental Management ("IDEM"), file this Complaint to recover natural resource damages resulting from the release, and/or threat of release of hazardous substances, and the discharge and/or substantial threat of discharge of oil, from various facilities owned and/or operated by the Defendants into the Grand Calumet River and/or Indiana Harbor Canal in northwest Indiana.

NATURE OF ACTION

1. The United States and the State of Indiana bring this civil action pursuant to

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, commonly known as the Clean Water Act ("CWA"), and the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 *et seq.*, for declaratory relief, response costs and damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, controlled by or appertaining to the United States and the State of Indiana, as trustees for those resources, including the costs of assessing such injury, resulting from releases and/or threat of releases of hazardous substances, and discharges and/or substantial threats of discharges of oil, into or within the Grand Calumet River and/or the Indiana Harbor Canal, comprising a portion of the Grand Calumet River/Indiana Harbor Canal Site (GCR/IHC Riparian Site" or "Site") in northwest Indiana.

2. The State of Indiana also alleges that the Defendants are liable to the State under the Indiana Environmental Management Act, IC 13-30-2-1 and IC 13-18-4-5, Indiana Hazardous Substances Response Trust Fund, IC 13-25-4-1, Indiana Flood Control Act, IC 14-28-1, *et. seq.*, and the common law for injunctive relief, costs and damages recoverable under such statutory authority and the common law, including damages for injury to, destruction of, or loss of natural resources within, at or near the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site, as well as the cost of assessing such injury or loss at the Site. Indiana Code 13-25-4-8 allows the State of Indiana to bring this action.

3. The Secretary of the Interior is the trustee designated by the President with respect to a variety of natural resources and their supporting ecosystems. Exec. Order No. 12580 as amended

by Exec. Order 12777; 40 C.F.R. § 300.600. The Secretary's trusteeship includes, but is not limited to, the following natural resources and their supporting ecosystems: migratory birds; certain anadromous fish, endangered species and marine mammals; federally owned lands and minerals; and certain federally managed water resources. 40 C.F.R. § 300.600(b)(2).

4. The United States, through DOI, is a trustee for certain natural resources in and around the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site.

5. The Regional Director of the U.S. Fish and Wildlife Service ("USFWS"), Region 3, has been designated by the Secretary of the Interior as the trustee official for all natural resources within the trusteeship of DOI with respect to natural resource damage assessment activities related to the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site.

6. In 1987, the Governor of the State of Indiana, pursuant to CERCLA Section 107(f)(2)(B), 42 U.S.C. § 9607(f)(2)(B), delegated natural resource trusteeship to officials at IDNR and IDEM. The State of Indiana, through the Deputy Director of Land Management for IDNR and the Program Counsel Section Chief for IDEM, are the co-trustees for natural resources in and around the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of, and the parties to, this action pursuant to CERCLA Section 107, 42 U.S.C. § 9607, CWA Section 311(f)(2), 33 U.S.C. § 1321(f)(2), and OPA Section 1017(b), 33 U.S.C. § 2717(b).

8. Venue is proper in this judicial district pursuant to CERCLA Section 113(b), 42

U.S.C. § 9613(b), CWA Section 311(f)(2), 33 U.S.C. § 1321(f)(2), and OPA Section 1017(b), 33 U.S.C. § 2717(b), because: A) the releases and/or threatened releases of hazardous substances from facilities, and the resulting damages, occurred in this district; B) the discharges and/or substantial threats of discharge of oil from facilities, and the resulting damages, occurred in this district; and C) the Defendants do business in, and may be found in this district.

DEFENDANTS

9.a. Each of the Defendants is a person (or is a successor to a person), within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607; CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7); and OPA Section 1001(27), 33 U.S.C. § 2701(27), who currently owns a facility, or owned or operated a facility at the time of a disposal of hazardous substances, or of a discharge or a substantial threat of a discharge of oil into the Grand Calumet River and/or the Indiana Harbor Canal, such that each Defendant is: A) an “owner or operator” of one or more facilities, within the meaning of CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6); OPA Section 1001(26), 33 U.S.C. § 2701(26); and CERCLA Sections 101(20)(A) and 107(a)(2), §§ 9601(20)(A) and 9607(a)(2); and/or B) an “owner” and “operator” of one or more facilities within the meaning of CERCLA Sections 101(20)(A) and 107(a)(1), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(1).

b. Each of the Defendants is a person (or is successor to a person) who, by contract, agreement or otherwise arranged for the disposal or treatment of hazardous substances owned or possessed by such person within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

10. Defendant Atlantic Richfield Company is a corporation organized and existing under the laws of the State of Maryland, which is registered to do business in the State of Indiana.

11. Defendant ARCO Environmental Remediation, L.L.C. is a corporation organized and existing under the laws of the State of Delaware, which is registered to do business in the State of Indiana. On information and belief, ARCO Environmental Remediation L.L.C. is a successor to Atlantic Richfield Company.

12. Defendant BP Products North America Inc. is a corporation organized and existing under the laws of the State of Maryland, which is registered to do business in the State of Indiana.

13. Defendant Exxon Mobil Corporation is a corporation organized and existing under the laws of the State of New Jersey, which is registered to do business in the State of Indiana.

14. Defendant GATX Corporation, also known as The General American Transportation Corporation, is a corporation organized and existing under the laws of the State of New York, which is registered to do business in the State of Indiana.

15. Defendant Georgia-Pacific Corporation is a corporation organized and existing under the laws of the State of Georgia, which is registered to do business in the State of Indiana.

16. Defendant E. I. du Pont De Nemours and Company is a corporation organized and existing under the laws of the State of Delaware, which is registered to do business in the State of Indiana.

17. Defendant Ispat Inland Inc. is a corporation organized and existing under the laws of the State of Delaware, which is registered to do business in the State of Indiana.

18. Defendant United States Steel Corporation is a corporation organized and existing

under the laws of the State of Delaware, which is registered to do business in the State of Indiana.

STATUTORY BACKGROUND

CERCLA

19. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section - -

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * * *

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for —

* * * *

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D) . . . The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 or Title 26

20. The term "hazardous substances," is defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14). Hazardous substances consist of listed and unlisted hazardous substances. See 40 C.F.R. § 302.4(a), (b). The listed CERCLA hazardous substances are identified in the Table set forth in 40 C.F.R. § 302.4.

21. CERCLA Section 101(9), 42 U.S.C. § 9601(9), provides:

‘facility’ means (A) any building, structure, installation, equipment, pipe or pipeline . . . well, pit, pond, lagoon, impoundment, ditch . . . or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located”

22. CERCLA Section 101(20)(A) provides: “‘owner or operator’ means . . . (ii) in the case of an onshore facility . . . any person owning or operating such facility”

23. CERCLA Section 101(18) provides: “‘onshore facility’ means any facility . . . of any kind located in, on, or under any land or nonnavigable waters within the United States.

24. CERCLA Section 101(22), 42 U.S.C. § 9601(22) provides: “‘release’ means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment”

25. CERCLA Section 101(8), 42 U.S.C. § 9601(8), provides: “‘environment’ means (A) the navigable waters . . . and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.”

26. CERCLA Section 101(16), 42 U.S.C. § 9601(16), provides: “‘natural resources’ means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States . . . any State or local government”

CLEAN WATER ACT

27. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. 33 U.S.C. § 1251(a).

28. CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), prohibits: “The discharge of oil or

hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection”

29. For purposes of CWA Section 311, 40 C.F.R. § 110.1 provides, as to the term “navigable waters:”

“Navigable waters” means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section

30. CWA Section 311(c)(1)(A), 33 U.S.C. § 1321(c)(1)(A), requires the President, consistent with the National Contingency Plan, 40 C.F.R. Part 300, to “ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a

discharge, of oil or a hazardous substance - - (i) into or on the navigable waters; (ii) on the adjoining shoreline to the navigable waters"

31. CWA Section 311(c)(1), 33 U.S.C. § 1321(c)(1), provides:

(A) The President shall, in accordance with the National Contingency Plan . . . ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance - -
(i) into or on the navigable waters;
(ii) on the adjoining shorelines to the navigable waters;

* * * *

(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may - -

(i) remove or arrange for the removal of a discharge and mitigate or prevent a substantial threat of a discharge, at any time;
(ii) direct or monitor all Federal, State and private actions to remove a discharge;

* * * *

32. The President's authority under CWA Section 311 has been delegated to the Administrator of the Environmental Protection Agency, and to the head of each other Federal department and agency having responsibilities under the National Contingency Plan. See Executive Order No. 11735, 38 Fed. Reg. 21243 (August 7, 1973).

33. CWA Section 311(f), 33 U.S.C. § 1321(f), provides:

(2) Except where an owner or operator of an on-shore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an

amount not to exceed \$50,000,000 . . . The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs

* * * *

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State Government.

34. CWA Section 311(a), 33 U.S.C. § 1321(a), provides: “‘discharge’ includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping”

35. CWA Section 311(a), 33 U.S.C. § 1321(a), provides: “‘oil’ means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”

36. CWA Section 311(a), 33 U.S.C. § 1321(a), provides: “‘person’ includes any individual, firm, corporation, association, and a partnership.”

37. Pursuant to CWA Section 311(b)(4), the Administrator of the Environmental Protection Agency has determined by regulation, set forth at 40 C.F.R. § 110.3, that:

discharges of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that:

- (a) Violate applicable water quality standards; or
- (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

38. Pursuant to CWA Section 311(b)(4), 33 U.S.C. § 1321(b)(4), the Administrator of the Environmental Protection Agency has determined by regulation, set forth at 40 C.F.R. Part 117, those quantities of hazardous substances the discharge of which may be harmful to the public health and welfare or the environment of the United States, and is a violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

39. CWA Section 311(a), 33 U.S.C. § 1321(a), provides: “‘onshore facility’ means any facility . . . of any kind located in, on, or under any land within the United States other than submerged land.”

OIL POLLUTION ACT

40. The principal purposes of the Oil Pollution Act (“OPA”) include establishing a fund to pay for the costs of removal of oil in the event of a discharge or a substantial threat of a discharge of oil, and to compensate any party suffering damages from actual or threatened discharges of oil. S. Rep. No. 94, 101st Cong., 1st Sess. (1989). Congress designed OPA to provide protection for the environment and to aid the victims of oil spills. *Id.*

41. OPA Section 1002, 33 U.S.C. § 2702, provides:

(a) Notwithstanding any other provision or rule of law . . . each responsible party for a vessel or a facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shore lines . . . is liable for the . . . damages specified in subsection (b) that result from such incident.

* * * *

(b) (2) (A) Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

42. OPA Section 1001(7), 33 U.S.C. § 2701(7), provides: “‘discharge’ means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.”

43. OPA Section 1001(20), 33 U.S.C. § 2701(20), provides: “‘natural resources’ includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States . . . any State or local government, or Indian tribe, or any foreign government.”

44. OPA Section 1001(21), 33 U.S.C. § 2701(21), states, “‘navigable waters means the waters of the United States, including the territorial sea.’”

45. OPA Section 1001 (23), 33 U.S.C. § 2701(23), provides:

‘oil’ means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that act.

46. OPA Section 1001(24), 33 U.S.C. § 2701(24), defines “onshore facility” as “any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land.” OPA Section 1001(9), 33 U.S.C. § 2701(9), defines “facility” as “any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes[.]”

47. OPA Section 1001(30), 33 U.S.C. § 2701(30), provides: “‘remove’ or ‘removal’

means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damages to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches.”

48. OPA Section 1001(31), 33 U.S.C. § 2701(31), provides: “‘removal costs’ means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.”

49. OPA Section 1001(32)(B), 33 U.S.C. § 2701(32)(B), provides: “‘responsible party’ means . . . (B) In the case of an onshore facility . . . any person owning or operating the facility.”

50. Federal oil spill removal actions are financed through the Oil Spill Liability Trust Fund (“Spill Fund”), which was created by Congress in 1990 with the enactment of OPA. *See* 26 U.S.C. §§ 4611 and 9509. The Spill Fund is financed by taxes on petroleum, and reimbursement and civil penalties from responsible parties. Pursuant to OPA Section 1012(a), 33 U.S.C. § 2712(a), the Spill Fund can be used, *inter alia*, for the payment of federal and state removal costs; costs of federal, state and Indian natural resource damage trustees; certain non-governmental claims against the Spill Fund; and certain federal administrative, operational and personnel costs and expenses under OPA. The Spill Fund is administered by the U.S. Coast Guard, National Pollution Funds Center.

51. Interest on outstanding debts payable by responsible parties to claimants under OPA accrues as set forth in 33 U.S.C. § 2705.

FACTUAL BACKGROUND

52. E.I. du Pont De Nemours and Company is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), of a facility in East Chicago, Indiana, that manufactures industrial inorganic chemicals such as sodium silicate and colloidal silica. E.I. du Pont De Nemours and Company is also a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

53. Georgia-Pacific Corporation is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), of a paper production facility in Gary, Indiana. Georgia-Pacific Corporation is also a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

54. Atlantic Richfield is, or at relevant times was the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA Section 1001(26), 33 U.S.C. § 2701(26), of a refinery and associated tank farm (now known as the Energy Cooperative, Inc. Facility (“ECI Facility”)), in East Chicago, Indiana, along the Lake George branch of the Indiana Harbor Canal. Atlantic Richfield is also a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3). On information and belief, ARCO Environmental Remediation, L.L.C. is a successor corporation to Atlantic Richfield.

55. BP Products North America Inc. is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA Section 1001(26), 33 U.S.C. § 2701(26), of several facilities at Whiting, Indiana, including an oil refinery on the shore of Lake Michigan, a tank farm, a pipeline facility, and a site adjacent to the Indiana Harbor Canal at the confluence of the Lake George and Grand Calumet branches of the Canal. BP Products North America Inc. is also a person that arranged for disposal or treatment of hazardous substances at such facilities, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

56. Exxon Mobil Corporation is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA Section 1001(26), 33 U.S.C. § 2701(26), of a facility in East Chicago, Indiana, which includes a bulk petroleum storage terminal and a transfer facility for finished petroleum products such as gasoline and other distillates. Exxon Mobil Corporation is also a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

57. GATX Corporation is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA Section 1001(26), 33 U.S.C. § 2701(26), of a facility in East Chicago, Indiana, on the west bank of the Canal, which, among other things, cleans and repairs railroad tank and hopper cars. GATX Corporation is also

a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

58. ISPAT Inland Inc. is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A) and 9607(a)(2), CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA Section 1001(26), 33 U.S.C. § 2701(26), of a steel manufacturing facility in East Chicago, Indiana. ISPAT Inland Inc. is also a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

59. United States Steel Corporation, is, or at relevant times was, the “owner” and/or “operator,” within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A), CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA Section 1001(26), 33 U.S.C. § 2701(26), of the “Gary Works,” an integrated steel making facility located in Gary, Indiana. United States Steel Corporation is also a person that arranged for disposal or treatment of hazardous substances at such facility, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

60. Pursuant to CERCLA Section 102(a), 42 U.S.C. § 9602(a), U.S. EPA has designated polychlorinated biphenyls (“PCB”) as CERCLA hazardous substances. See 40 C.F.R. § 302.4 (Table).

61. A discharge of polychlorinated biphenyls (“PCB”) equal to or in excess of one pound constitutes a violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3). See 40 C.F.R. § 117.3 (Table) .

62. One or more of the industrial facilities and properties referred to in paragraphs 52

through 59, above, is or includes a “facility” within the meaning of Section 9601(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A) at or from which there was a release or a threatened release of “hazardous substances” within the meaning of CERCLA Section 107, 42 U.S.C. § 9607, into the Grand Calumet River and/or the Indiana Harbor Canal.

63. One or more of the industrial facilities and properties referred to in paragraphs 52 through 59, above, is or includes an “onshore facility” within the meaning of CWA Section 311(10), 33 U.S.C. § 1321(10), at or from which there was a discharge of “oil or hazardous substances” into navigable waters within the meaning of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

64. One or more of the industrial facilities and properties referred to in paragraphs 52 through 59, above, is or includes a “facility” within the meaning of OPA Section 1001(9), 33 U.S.C. § 2701(9), and/or an “onshore facility” within the meaning of OPA Section 1001(24), 33 U.S.C. § 2701(24), from which “oil” is discharged or which poses the substantial threat of a discharge of “oil,” within the meaning of OPA Section 1002(a), 33 U.S.C. § 2702.

65. Oil, and hazardous substances including but not limited to PCBs, that were released and/or discharged from some or all of the facilities referred to in paragraphs 52 through 59, above, have resulted in an indivisible injury or harm to “natural resources,” within the meaning of CERCLA Section 101(16), 42 U.S.C. § 9601(16), CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and OPA Section 1001(20), 33 U.S.C. § 2701(20), including resources under the trusteeship of DOI, IDNR, and IDEM. Such releases have resulted in harm to, injury to, destruction, or loss of natural resources, including surface water, ground water, fisheries, migratory birds, sediments, habitat, and vegetative and riparian resources at the GCR/IHC

Riparian Site.

FIRST CLAIM FOR RELIEF
(Natural Resource Damages Under CERCLA)

66. The allegations set forth in paragraphs 1 through 65, inclusive, are realleged and incorporated herein by reference.

67. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (1) the owner or operator of a vessel or a facility, [or]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which hazardous substances were disposed of,

* * *

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for —

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release.

68. Each of the defendants is or was the owner or operator of one or more of the facilities referred to in paragraphs 52 through 59, above at the time of disposal of hazardous substances at or from such facility or facilities.

69. There has been a release of hazardous substances, including but not limited to PCBs, at and from each of the facilities referred to in paragraphs 52 through 59, above. The release of hazardous substances at and from each of these facilities has resulted in damages for injury to, destruction of, or loss of natural resources in the Grand Calumet River and/or the Indiana Harbor Canal, both of which comprise a portion of the GCR/IHC Riparian Site.

70. Pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), liability for

natural resource damages shall be to the United States, and to the State for natural resources belonging to, managed by, controlled by, or appertaining to the State, and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe.

71. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides, in relevant part, that “the Court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

72. Pursuant to Sections 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), defendants are jointly and severally liable to the United States and for all damages for injury to, destruction of, loss of, or loss of use of, natural resources under the trusteeship of DOI, IDNR, and IDEM within the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site, including the reasonable costs of assessing the damage, resulting from the releases of hazardous substances at and from the facilities referred to in paragraphs 52 through 59, above, which have come to be located in the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site.

SECOND CLAIM FOR DAMAGES
(Recovery of Natural Resource Damages Under CWA)

73. The allegations set forth in paragraphs 1 through 65, inclusive, are realleged and incorporated herein by reference.

74. “Oil” was “discharged” from one or more of the facilities identified in paragraphs 52 through 59 into the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian

Site within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

75. The oil discharged from one or more of the facilities identified in paragraphs 52 through 59 above, created a sheen on the waters of the Grand Calumet River and the Indiana Harbor Canal. As such, the discharge of oil from Defendants' facilities constitutes a violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3). See 40 C.F.R. § 110.3.

76. "Hazardous substances," including but not limited to at least one pound of polychlorinated biphenyls ("PCB"), were "discharged" from one or more of the facilities identified in paragraphs 52 through 59 above, into the Grand Calumet River, the Indiana Harbor Canal, and the GCR/IHC Riparian Site within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1). A discharge of PCB equal to or in excess of one pound constitutes a violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3). See 40 C.F.R. 117.3 (Table).

77. The Grand Calumet River and the Indiana Harbor Canal are navigable waters of the United States.

78. In accordance with CWA Section 311(f), 33 U.S.C. § 1321(f), Defendants are strictly, jointly, and severally liable for the full amount of the costs incurred by the United States in conducting the removal of oil or a hazardous substance that was discharged from Defendants' onshore facility into navigable waters, including any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection CWA Section 311(b), 33 U.S.C. § 1321(b).

THIRD CLAIM FOR RELIEF
(Recovery of Natural Resource Damages Under OPA)

79. The allegations set forth in paragraphs 1 through 65, inclusive, are realleged and incorporated herein by reference.

80. "Oil," within the meaning of OPA Section 1001(23), 33 U.S.C. § 2701(23), was discharged and/or substantially threatened to be discharged from one or more of the facilities referred to in paragraphs 54 through 59 above .

81. Each industrial facility referred to in paragraphs 54 through 59 above is a "facility" within the meaning of OPA Sections 1001(9) and 1002, 33 U.S.C. §§ 2701(9) and 2702, because it is or was used for the production and/or storage of oil.

82. The Grand Calumet River and the Indiana Harbor Canal are navigable waters of the United States.

83. The presence of oil at and under the facilities referred to in paragraphs 54 through 59 above, poses a substantial threat of a "discharge" of oil into or upon navigable waters and adjoining shorelines within the meaning of OPA Sections 1001(7) and 1002, 33 U.S.C. §§ 2701(7) and 2702.

84. Defendants Atlantic Richfield Company, ARCO Environmental Remediation L.L.C., BP Products North America, Inc., Exxon Mobil Corporation, GATX Corporation, ISPAT Inland, Inc. and United States Steel Corporation are or were at all material times the owners and/or operators, within the meaning of OPA Section 1001(26), 33 U.S.C. § 2701(26), of a facility from which oil within the meaning of OPA was discharged, or was substantially threatened to be

discharged, into the Grand Calumet River and/or the Indiana Harbor Canal, causing damage to natural resources.

85. Each Defendant is a “person” within the meaning of OPA Section 1001(27), 33 U.S.C. § 2701(27).

86. Defendants Atlantic Richfield Company, ARCO Environmental Remediation L.L.C., BP Products North America, Inc., Exxon Mobil Corporation, GATX Corporation, ISPAT Inland, Inc. and United States Steel Corporation is each a “responsible party” within the meaning of OPA Sections 1001(32) and 1002(a), 33 U.S.C. §§ 2701(32) and 2702(a), for the discharge or substantial threat of discharge of oil from their facilities.

87. As “responsible parties,” Atlantic Richfield Company, ARCO Environmental Remediation L.L.C., BP Products North America, Inc., Exxon Mobil Corporation, GATX Corporation, ISPAT Inland, Inc. and United States Steel Corporation, are each strictly, jointly, and severally liable pursuant to OPA Sections 1002(b)(2)(A), 33 U.S.C. § 2702(b)(2)(A), for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damages resulting from the discharges and substantial threats of discharge of oil from their facilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America, and the State of Indiana, respectfully request the Court:

A. To find the Defendants jointly and severally liable under CERCLA for all

damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances at and from the facilities referred to in paragraphs 52 through 59, above, as well as for all reasonable costs incurred or to be incurred by the United States and the State of Indiana in assessing such injury to, destruction of, or loss of natural resources, including enforcement costs, and to order defendants jointly and severally to pay all such damages and costs, together with prejudgment and post-judgment interest;

B. To enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that defendants are jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for future damages to natural resources of the United States and the States resulting from releases of hazardous substances at and from the facilities referred to in paragraphs 52 through 59, above;

C. To find the Defendants strictly, jointly and severally liable under CWA Section 311, 33 U.S.C. § 1321, for the costs of removal of oil or hazardous substances that were from Defendants' facilities into navigable waters of the United States, including the costs incurred in the restoration or replacement of the natural resources that were damaged or destroyed in violation of CWA Section 311(b), 33 U.S.C. § 1321(b);

D. To find Defendants Atlantic Richfield Company, ARCO Environmental Remediation L.L.C., BP Products North America, Inc., Exxon Mobil Corporation, GATX Corporation, ISPAT Inland, Inc. and United States Steel Corporation, strictly, jointly and severally liable under OPA Section 1002, 33 U.S.C. § 2702, for the damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of

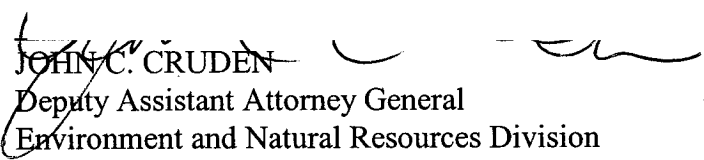
assessing the damage; and

E. Grant such other and further relief as is appropriate.

Respectfully submitted,

FOR THE UNITED STATES

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|-------------------------------|---------------|-----------------------|-------------|-------------------------|
| National Lakeshore | Hiking trail | Ranger station | Campground | Swimming area |
| State Park or Nature Preserve | Bicycle trail | Wheelchair accessible | Beach bar | Cross country ski trail |
| | | Self guiding trail | Picnic area | |

0 1 2 3 4 Kilometers
0 1 2 3 4 Miles



Water Safety
Lake Michigan waters can be hazardous. Rip currents occur frequently during periods of high wind and waves. During the winter, shell ice forms along the lakeshore and is never safe to walk on. Check with local authorities regarding conditions and potential hazards.

LAKE MICHIGAN

